



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-145492

SEP 21 1976

The Honorable David N. Henderson  
Chairman, Committee on Post Office  
and Civil Service  
House of Representatives

Dear Mr. Chairman:

This refers to your letter of September 17, 1976, asking 2 questions on the provision in the Legislative Branch Appropriation Act, 1977 (H.R. 14238) placing a limitation on the use of appropriations for the payment of compensation.

The language in question reads as follows:

"Provided, That none of the funds contained in this Act shall be used to increase salaries of Members of the House of Representatives pursuant to section 204a of Public Law 94-82 in excess of the salary rate in effect on September 30, 1976, for such position or officer. No part of the funds appropriated in this Act or any other Act shall be used to pay the salary of an individual in a position or office referred to in section 225(f) of the Federal Salary Act of 1967, as amended (2 U.S.C. 356), including a delegate to the House of Representatives, at a rate which exceeds the salary rate in effect on September 30, 1976, for such position or office except increases submitted by the President pursuant to section 225 of the Federal Salary Act of 1967."

The first question is whether the language "No part of the funds appropriated in this Act or any other Act" has the effect of extending the prohibition on the use of funds to any increase that would occur after the end of fiscal year 1977. You refer in particular to any increase in salaries that could occur under section 204a of Public Law 94-82, on October 1, 1977, or any date subsequent to the end of fiscal year 1977.

SEP 21 1976

Our view is that a provision in an annual appropriation act may not be construed to be permanent legislation unless the language used or the nature of the provision renders it clear that such was the intention of the Congress. When the word "hereafter" or other words indicating futurity are used, or when the provision is of a general nature bearing no relation to the object of the appropriation, the provision may be construed to be permanent legislation. We find no wording in the appropriation provision here in question which shows a clear intent to enact a permanent restriction. The term "funds appropriated in this Act" clearly relates only to the funds authorized in 1977 fiscal legislative appropriation act for 1977 fiscal year. The term "or any other Act" covers the same subject matter, that is, pay increases for officers and employees. Those words standing alone are not to be considered as words of futurity. We interpret them as a prohibition on the use of funds in the various other appropriation acts for fiscal year 1977 which otherwise would be used for pay increases of officers and employees whose salaries are not paid from funds authorized by the legislative appropriation act. There are other appropriation act provisions that use the words similar to those under consideration here. They are repeated year after year in the appropriation acts, which is indicative that such provisions were not considered by the Congress to be permanent legislation. Therefore, the first question is answered in the negative.

The second question is what effect the prohibition against the use of funds contained in the quoted provision may have on the salary ceiling for positions under the General Schedule or on positions the rate of pay for which is linked to a particular level of the Executive Schedule. You point out that you have no question as to the application of the limitation to positions under the Executive Schedule. You refer however, to those positions the compensation for which is fixed by law "at an annual rate which is equal to the rate for positions" at a particular level of the Executive Schedule.

Also you refer to 5 U.S.C. 5308 which provides that pay may not be paid to employees under the General Schedule, and several other groups subject to the section, "at a rate in excess of the rate of basic pay for level V of the Executive Schedule."

You state that the intention of Mr. Udall was that the freeze would apply to rates of compensation of the Executive Schedule and the rates of all positions linked to the Executive Schedule by specific

levels or ceilings. There were, we note, references in the debates in the Senate and House to the freeze affecting supergrads (GS-16 through GS-18). Nevertheless, the question you raise is whether the language of the provision actually does this, or whether the provision can be interpreted as not freezing the rates for an employee whose position is not under the Executive Schedule but who is entitled to a rate comparable to the rate of a particular level of the Executive Schedule or who is subject to the rate for Level V under 5 U.S.C. 5308.

The language does not suspend or postpone the operation of Public Law 94-82 and it is not therefore a limitation on the rates of pay established thereunder. The language sets a limitation on the use of funds. By its terms it restricts the use of funds otherwise available "to pay the salary of an individual in a position or office referred to in section 225(f) of the Federal Salary Act of 1967, as amended (2 U.S.C. 356)." It freezes the salary payments of those individuals at the "salary rate in effect on September 30, 1976, for such position or office."

The provisions of section 225(f) are specific as to the positions covered. There is no language in that section which refers to General Schedule employees or to employees linked to the Executive Schedule except as concerns the appropriate pay relationships between the offices and positions under 225(f) and the offices and positions in the General Schedule. (To construe mention of General Schedule employees in this context as a "reference" within the meaning of the appropriation limitation in question would be to deny an increase in pay to all General Schedule employees, a result clearly not intended. And it follows that if General Schedule employees are not referred to in section 225(f), the appropriation limitation by its terms does not serve to limit their pay.) Thus, a Presidential pay schedule under 5 U.S.C. 5305 authorizing a pay raise for General Schedule and Executive Schedule employees would entitle the General Schedule employee to a raise not to exceed the rate specified by the President for level V of the Executive Schedule. Likewise, the pay increase would be due employees authorized to receive "a rate equal to a rate for a particular level of the Executive Schedule." The reason for this, as indicated above, is that the pay limitation in the legislative appropriation act does not affect the legal rate that may be set by the President for Executive Schedule positions under other pay fixing procedures. The restriction

B-145492

is solely on the use of funds to pay salary increases to individuals in the positions or offices specified in section 225(f). Since Executive Schedule positions are specified in section 225(f), individuals in those positions could not receive the pay increase. But the legal rates for Executive Schedule offices and positions would still be the rate set by the President and the use of these rates is not prohibited for other pay purposes. The ceiling in 5 U.S.C. 5308 would, however, restrict payment of increases of General Schedule, and other positions subject to section 5308, to the rate set by the President for level V.

Therefore, the answer to question 2 is that pay increases to General Schedule employees and those linked to a particular rate of the Executive Schedule would not be affected by the appropriation restriction here in question.

I note that the restriction on funds for certain pay raises specifically is made inapplicable to increases that may be submitted by the President under section 225 of the Federal Salary Act of 1967.

Sincerely yours,

R. F. KELLER

Acting Comptroller General  
of the United States